

M.V., Appellant

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, SAN FRANCISCO REGIONAL
OFFICE, San Francisco, CA, Employer**

Appearances:

Case Submitted on the Record

Before:

JURISDICTION

ISSUE

FACTUAL HISTORY

On August 25, 2005 appellant, then a 52-year-old investigator support assistant, file an occupational disease (Form CA-2) claiming that she sustained major depression and chronic pain

syndrome due to supervisory harassment at work.¹ Appellant first became aware of her condition on February 29, 2000 and first related it to work factors on August 25, 2005. She stopped work on August 1, 2000. Appellant returned to work for three hours on May 21, 2001, again stopped work and did not return.

In an April 8, 2002 grievance form, appellant stated that she suffered emotional distress due to alleged supervisory harassment on or before December 10, 2001. A supervisor responded to these allegations in January and February 2002.²

In a July 21, 2006 letter, appellant asserted that in 1989 and from 1995 to 1997, treating psychiatrists diagnosed depression, anxiety and insomnia due to alleged harassment in the workplace.³ She asserted that, after a February 29, 2000 workplace incident, appellant felt extremely mentally unstable, sought treatment and was prescribed Valium.

In a September 20, 2006 letter, the employing establishment contended that appellant did not provide written notice of a February 29, 2000 injury or otherwise notify her supervisor within 30 days.

By decision dated January 19, 2007, the Office denied appellant's claim on the grounds that it was not timely filed under the three-year time limitation of section 8122 of the Act. It found that she should have been aware of the possible relationship between work factors and the claimed condition within three years of February 29, 2000. Appellant's treating psychiatrists diagnosed possible work-related conditions as early as 1989. She also described a "nervous breakdown" in February 2000 due to alleged harassment at work.

In a letter dated January 17, 2008,⁴ appellant requested reconsideration based on the weight of the medical evidence. In an addendum, she authorized her attorney to act as her representative. Appellant did not submit additional evidence.

By decision dated March 6, 2008, the Office denied appellant's request for reconsideration on the grounds that her January 17, 2008 letter and attorney authorization, the only evidence submitted, did not contain relevant evidence sufficient to warrant a merit review of the prior decision.

¹ The claim now before the Board was assigned File No. 13-2156425. Appellant filed a previous emotional condition claim under File No. 13-2015663. She submitted evidence under File No. 13-2156425 pertaining to the prior claim.

² Appellant submitted additional grievance documents.

³ Appellant did not submit reports from these physicians. She provided reports from June 2001 to April 2002 from two licensed clinical psychologists noting her account of harassment and discrimination at work. Dr. Angelica Silverman, an attending Board-certified psychiatrist, treated appellant for anxiety from February 22, 2000 to May 5, 2003.

⁴ The postmark is not of record.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁵ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ Appellant need only submit relevant, pertinent evidence not previously considered by the Office.⁹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁰

ANALYSIS

The Office denied appellant's emotional condition claim on January 19, 2007. Appellant requested reconsideration by letter dated January 17, 2008, based on unspecified medical evidence previously submitted. She also authorized her attorney to represent her.

The underlying issue at the time of the last merit decision was the timeliness of appellant's emotional condition claim. To be relevant, the evidence submitted in support of the January 17, 2008 request for reconsideration must address that issue. The only evidence she submitted in support of her reconsideration request was her January 17, 2008 request for reconsideration and an attorney authorization letter. These documents are not relevant evidence regarding the timeliness of appellant's emotional condition claim. Therefore, material is not relevant and pertinent and are insufficient to require the Office to reopen her claim for consideration of the merits.¹¹

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b). *See also T.E.*, 59 ECAB ____ (Docket No. 07-2227, issued March 19, 2008).

⁸ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁹ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

¹⁰ *Annette Louise*, 54 ECAB 783 (2003).

¹¹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act. She did not show that it erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 6, 2008 is affirmed.

Issued: October 20, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board